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IN THE

Supreme Court of the United States

October Term, 1960

No. 111.

BURTON N. PUGACH,

Petitioner,

vs.

HONORABLE ISIDORE DOLLINGER, District Attorney of Bronx County, et al.,

Respondents.

WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE PETITIONER

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Opinions Below

The opinion of the Court of Appeals is reported at 277 F. 2d 739.

Jurisdiction

The judgment of the Court of Appeals was entered on April 14 1960 (R. 55).* A petition for rehearing was denied on April 26, 1960 (R. 56). The petition for a writ of certiorari was filed on May 28, 1960 and granted on June 27, 1960. The jurisdiction of this Court is invoked under 28 U. S. C. 1337, 1343.

* "R" refers to the record.

Question Presented

Whether in a state criminal prosecution the Federal Court can enjoin state officials from using and divulging, at a trial, evidence obtained by state police in violation of Sec. 605 of the Federal Communications Act.

Statute Involved

Section 605 of the Federal Communications Act of June 19, 1934, c. 652, 48 Stat. 1103, 47 U. S. C. 605:

> "No person receiving or assisting in receiving, or transmitting, or assisting in transmitting, any interstate or foreign communication by wire or radio shall divulge or publish the existence, contents, substance, purport, effect, or meaning thereof, except through authorized channels of transmission or reception, to any person other than the addressee, his agent, or attorney, or to a person employed or authorized to forward such communication to its destination, or to proper accounting or distributing officers of the various communicating centers over which the communication may be passed, or to the master of a ship under whom he is serving, or in response to a subpena issued by a court of competent jurisdiction, or on demand of other lawful authority; and no person *not being authorized* by the sender shall intercept any communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person; and no person not being entitled thereto shall receive or assist in receiving any interstate or foreign communication by wire or radio and use the same or any information therein contained for his own benefit or for the benefit of

another not entitled thereto; and no person having received such intercepted communication or having become acquainted with the contents, substance, purport, effect, or meaning of the same or any part thereof, knowing that such information was so obtained, shall divulge or publish the existence, contents, substance, purport, effect, or meaning of the same or any part thereof, or use the same or any information therein contained for his own benefit or for the benefit of another not entitled thereto: *Provided*, That this section shall not apply to the receiving, divulging, publishing, or utilizing the contents of any radio communication broadcast, or transmitted by amateurs or others for the use of the general public, or relating to ships in distress."

Statement

An indictment was returned against the petitioner, BURTON N. PUGACH, an attorney admitted to practice in the State of New York, and others, by the Grand Jury of Bronx County, New York, which indictment charged the petitioner with the crimes of burglary in the second degree, maiming, assault in the second degree and conspiracy. Another indictment charges petitioner with felonious possession of firearms.

The present action was brought in the United States District Court for the Southern District of New York against the District Attorney of Bronx County and the Police Commissioner of New York City for a permanent injunction restraining the use by them and their agents and employees on the forthcoming trial of certain wiretap evidence. A motion for a preliminary injunction was denied and the complaint was dismissed by the District Court.

Petitioner appealed to the Circuit Court of Appeals from the order denying a preliminary injunction and dismissing his complaint. Petitioner moved the Court of Appeals for a stay pending appeal. The motion was granted by order dated February 11, 1960 (R. 24). Which order stayed and enjoined the respondents "from using and disclosing wiretap evidence at the trial of Pugach in the County Court of Bronx County, New York, on the two indictments there pending against him in accordance with the opinion of this court" (R. 35). For the opinion of the Court of Appeals in granting stay pending appeal see (R. 25).

It is not disputed that the respondents, or their agents, on June 15, 1959, procured an order of the Supreme Court of the State of New York permitting Pugach's office telephone wires to be tapped; that they were tapped, and the contents of the wiretaps were divulged to the Grand Jury; and that the District Attorney intended to make use of such evidence at the trial. The District Attorney has not denied that he expects to use the wiretap evidence, nor does he contest petitioner's allegation that the appellant will be subject to irreparable injury if convicted by means of such evidence (See Statement of Facts in the opinion of Judge Medina (R. 24) and Judge Lumbard (R. 35).

Petitioner's contention is succinctly and clearly stated by Judge Medina wherein he states, as follows (R. 26):

> "Pugach's argument is: that Section 605 of the Federal Communications Act makes it a federal crime to tap a telephone and 'divulge or publish the existence, contents, substance, purport, effect or meaning of such intercepted communication'; that defendants or their agents are about to commit this federal crime by further divulging and offering the wiretaps in evi-

dence at the trial; that the Supreme Court has in effect held in *United States* vs. *Benanti*, 1957, 355 U. S. 96, that the constitutional and legislative authorization of wiretaps by the State of New York is illegal and void; that if the evidence is received at the trial and Pugach is convicted he will be wholly without remedy, since under *Schwartz* v. *Texas*, 1952, 344 U. S. 199, which is still in effect, the evidence will be admissible under the New York rules of evidence, even though illegally obtained, and his conviction will not be reversed. He also claims that the result of such violations of federal law will deprive him of his liquor license and his license to practice law. Pugach argues that, unless we gant the injunctive relief he prays, defendants and their agents will go ahead and violate the federal statute with impunity, shielding themselves behind a constitutional and legislative scheme of the State of New York that has been held by the Supreme Court to be invalid. *This is a powerful argument and we have been unable to find any satisfactory answer to it*" (Italics ours).

Summary of Argument

A. That Sec. 605 of the Federal Communications Act is a comprehensive scheme of interstate regulations, whose commands are not vague or uncertain. The prohibition of Sec. 605 apply to all communications, even those that are purely intrastate, *Weiss* v. *U. S.*, 308 U. S. 321, and they forbid not only intercepting the message, making use of the information intercepted but also divulging its existence, its substance, or its terms.

B. That in *Benanti* v. *U. S.*, 355 U. S. 96 this court held that congress setting out a prohibition in plain terms, did not mean to allow state legislation which would contradict

that section and that policy. This in effect pre-empted the field and state statute in conflict with Sec. 605 must fall. U. S. Const. Act VI, clause 2. It would therefore appear that a tap made by police officers under the laws of the State of New York, did not have a semblance of legality to support it.

C. Sec. 605 standing by itself without the benefit of the punitive portion of Sec. 501, is essentially a civil right statute that can be enforced by injunctive proceedings. 28 U. S. C. 1337, 1343.

D. *Schwartz* v. *Texas*, 344 U. S. 199 should be re-examined and re-evaluated. It is obvious that since that case, wiretapping has become big business and has increased beyond the expectation of Judge Minton. It is not a question of whether congress intended to write a rule of evidence for the states but it is now apparent that under the *guise* of a rule of evidence, Sec. 605 has been for all purposes interred by the disobedience of state officials.

ARGUMENT

A. The Federal Court can and should enjoin state officials from using, at a trial, evidence obtained by State police in violation of Sec. 605 of the Federal Communications Act.

The problem before this Court is an old and venerable one. The conflict between State and Federal powers. *Benanti* v. *U. S.*, 355 U. S. 96, seemingly resolved this problem with respect to Sec. 605 of the Communications Act when it stated at pages 105-106, as follows:

> "In light of the above considerations, and keeping in mind this comprehensive scheme of interstate

regulation and the public policy underlying Section 605 as part of that scheme, we find, that Congress, setting out a prohibition in plain terms, did *not mean to allow state legislation which would contradict that section and that policy.*" (Italics ours)

Footnote 18 reads:

"In passing, it should be pointed out that several Attorneys General of the United States have urged Congress to grant exceptions to Sec. 605 to federal agents under limited circumstances. See, e.g., Hearings before Subcommittee No. 5 of the House Committee on the Judiciary on H. R. 762, 867, 4512, 4728, 5096, 84th Cong., 1st Sess. 28; Rogers, The Case for Wire Tapping, 63, Yale L. J. 792 (1954). But Congress has declined to do so. In view of this, it would seem unreasonable to believe that Congress is willing to allow this same sort of exception to state agents with no further legislation on its part."

Further, Judge Medina, in his opinion (R. 30), stated as follows:

"Moreover, the fact that the wiretapping is authorized pursuant to the Constitution and legislation of the State of New York, pursuant to which New York judges continue to order wiretapping and police officers do the wiretapping and divulge the contents of the wiretaps in their testimony, even after the Supreme Court has held these constitutional and legislative provisions to be an invasion of a field *preempted by the Congress, makes the position of defendants even more untenable.*" (Italics ours)

Judge Waterman's opinion is also of interest when he states as follows (R. 31) at page 738:

"Moreover, there is uncertainty among the State officers themselves. At least one of the Justices of the

New York Supreme Court refuses to sign orders authorizing wiretaps on the ground that they are now clearly illegal under the ruling of the Supreme Court in *United States v. Benanti*, 355 U. S. 96 (1957). *Matter of Interception of Telephone Communications*, 9 Misc. 2d 121, 170 N. Y. S. 2d 84 (1958) (per Hofstadter, J.). But, as disclosed by the affidavits now before us, other Justices of the New York Supreme Court pursue a contrary course and numerous orders authorizing wiretaps are issued. This leaves in the middle conscientious New York State and municipal police officers who have tapped wires, pursuant to court order. It could well be that some of them, as the occasion presented itself, might be prosecuted for violating Section 605 when they divulge or publish what they have thus obtained. Such a divulgence would be in violation of the plain prohibition of the Section. Therefore, if at all possible to do so, it is in the *public interest to have the present anomalous state of affairs clarified.*" (Italics ours)

Judge Clark, in his dissenting opinion, stated as follows, (R. 48) at page 1414:

"In its latest pronouncement upon the issue, the Supreme Court of the United States has refused to find exception for state officers from the sweeping federal ban on unauthorized interception and divulgence of 'any communications,' contained in Sec. 605 of the Federal Communications Act, 47 U. S. C. Sec. 605. Speaking through the Chief Justice of the United States, a unanimous Court finds 'that Congress, setting out a prohibition in plain terms, did not mean to allow state legislation which would contradict that section and that policy.' And it points out the failure of Congress to grant exceptions, though strongly importuned to do so. *Benanti* v. *United States*, 355 U. S. 96, 105, 106.

Notwithstanding its decisive character, there is nothing surprising in the Court's statement; indeed, it would have been surprising had the Court said less. For the absolute character of the prohibition has been steadily emphasized over the years and the attempt to make the statute say less than it does has been conspicuously unsuccessful. So we must accept the interpretation that wire tapping, whether by state officers or by anyone else, is simply and shortly forbidden by federal law, subject to severe penalties of fine and imprisonment. 47 U. S. C. Sec. 501. Attack must therefore be limited to the need of new legislation because of its hampering effects on law enforcement of prosecuting officials cannot have the benefit of at least 'controlled' wire tapping. Involved are surely weighty arguments of public policy which the legislative body should weigh. But these arguments have not as yet prevailed with the only governmental agency having authority to act to modify the existing law, and I do not see how they can affect the responsibility of United States judges to enforce that law. *Hence for us I see no escape but to start with the premise that we are faced with repeated open and acknowledged violations of federal law which we are assured will be continued until and unless federal authorities intervene.*

Thus we have an absolute impasse going so far as to be almost ludicrous if the issue were not so fundamentally serious." (Italics ours)

It seems that generally speaking wire tapping is an evil thing, more so when employed by criminals. Yet it has not been possible to enforce the law against such persons when at the same time it has not been enforced against even more open violators though with loftier motives.[1]

[1] There appears to have been only one successful prosecution under the statute. *U. S.* v. *Gries*, 2 Cir. 247 F. 2nd 860.

Despite Sec. 605 and the judicial decisions that purport to regulate wire tapping today wire tapping is widespread, operating at the federal, state, municipal and private levels. See: Westin, The Wire Tapping Problem: An Analysis and a Legislative Proposal, 52 Col. L. Rev. 165, 167 (1952).

Professor Westin demonstrates how the tapper taps the conversation of public officials in every sort of government agency, of business men, of private persons for labor espionage, securing evidence of a wife's infidelity etc.[2]

Recently a study by the Pennsylvania Bar Association shows much of wire tapping in action with particularity with police activities in many areas, especially New York. This suggests the widespread practice employed by the police in New York, some of whose motives were not so commendable. See: Dash, Schwartz and Knowlton, The Eavesdropper 35 *et seq.* (1959).[3]

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[2] 52 Col. L. Rev. 165, 167, 168 (1952), quoted by Professor Donnelly of Yale in his careful article, *Comments and Caveats on the Wire Tapping Controversy*, 63 Yale L. J. 799 (1954).

[3] In *Wiretapping in New York*, 31 N. Y. U. L. Rev. 197 (1956), the figures for the orders received by the telephone company in New York City are given, viz., 1135 orders (good for 90 days) affecting 1954 wires for the year 1954 and 1013 orders affecting 1662 wires for the year 1953. The defendants take exception to the figures given by Mr. Justice Douglas, An Almanac of Liberty 355 (1954), but quote approvingly those given by Brown and Peer, *The Wiretapping Entanglement; How to Strengthen Law Enforcement and Preserve Privacy*, 44 Cornell L. Q. 175, 183 (1959), as being a total of 480 orders in New York City in 1952. In Dash, Schwartz and Knowlton, The Eavesdroppers 39 *et seq.*, 68, 69 (1959), the authors suggest that Mr. Justice Douglas' estimate properly refers to wire taps, not orders, and then, making their own estimate of from 16,000 to 29,000 wire taps a year, also suggest that the Justice's estimate is thus "closer to the truth than the figures submitted by the police to the Kings County prose-

In the light of these so called legal taps the figures of the private professional tappers must be staggering and the right of privacy of telephonic communication despite Sec. 605 is for all purposes a figment of the imagination.

Perhaps at this point we should harken to the warning issued by Judge Brandeis in the case of *Olmstead* v. *U. S.*, 277 U. S. 438 at page 489:

> "In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously * * *
>
> If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it breeds anarchy."

Also, it might not be amiss to repeat from the dissenting opinion of Justice Holmes in the case of *Olmstead* v. *United States, supra*:

> "We have to choose, and for my part I think it less evil that some criminals should escape than that the government should play an ignoble part."

Further, Judge Clark, stated, at page 1417, as follows:

> "In sum it is beyond dispute that there is a general, indeed universal, custom of federal law violation. Now this is a distressing situation, made not less so that in the eyes of many worthy citizens it is required by the asserted exigencies of successful law administration. But it is not an unusual situ-

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cutor." More lately Mr. Dash has given an estimate of from 13,000 to 20,000 wire taps per year. Hearing before the Subcommittee on Constitutional Rights of the Committee on the Judiciary, U. S. Senate, 86th Cong., 1st Sess., pursuant to S. Res. 62, Pt. 3, Wiretapping, Eavesdropping, and the Bill of Rights, 520-521 (1960).

ation. For actually it is a clash between federal and state governmental policies. As such it is a recurring struggle in our history and quite possibly a necessary one to a federal form of government. In the past we have found ways of meeting and solving the problem. Of course there are several forms of remedy; but the one to which there seems continual return when other remedies fail is the resort to the equity powers of the federal courts to enjoin repeated violations of the criminal law. This is an old and well established ground of equity jurisdiction, naturally to be resorted to only reluctantly as against state officials, but nevertheless thoroughly recognized. Thus the authority of United States courts to enjoin state officials, including prosecutor and others, from repeated violations of overriding federal laws has long been upheld in a variety of circumstances such as alien land ownership, rate regulation, closed shop and railroad tariff laws, and the like. Thus, for example, see *American Federation of Labor* v. *Watson*, 327 U. S. 582; *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624, 147 A. L. R. 674; *Watson* v. *Buck*, 313 U. S. 387; *Hague* v. *C. I. O.*, 307 U. S. 496; *Sterling* v. *Constantin*, 287 U. S. 378; *Terrace* v. *Thompson*, 263 U. S. 197; *Ex parte Young*, 209 U. S. 123; *Smyth* v. *Ames*, 169 U. S. 466, modified 171 U. S. 361. And see also *Rea* v. *United States*, 350 U. S. 214, upholding an injunction preventing a federal agent from transferring federally suppressed evidence to a state court or there testifying.

Directly in point also and perhaps most persuasive of all in view of the close analogy are the modern segregation cases. Thus see *Brown* v. *Board of Education of Topeka*, 347 U. S. 483, 38 A. L. R. 2d 1180, 349 U. S. 294; *Cooper* v. *Aaron*, 358 U. S. 1; *Harrison* v. *National Ass'n for the Advancement of*

Colored People, 360 U. S. 167, 179; *Faubus* v. *United* States, 8 Cir., 254 F. 2d 797, certiorari denied, 358 U. S. 829; *Clemons* v. *Board of Ed. of Hillsboro*, Ohio, 6 Cir., 228 F. 2d 853, certiorari denied *Board of Ed. of Hillsboro, Ohio* v. *Clemons*, 350 U. S. 1006. As these cases all demonstrate, a suit against a state officer violating federal law is not within the prohibition of actions against a state. See also Judge Parker's complete statement in *School Bd. of City of Charlottesville, Va.* v. *Allen*, 4 Cir., 240 F. 2d 59, certiorari denied 353 U. S. 910.

All these questions of jurisdiction the majority herewith concedes, including the irreparable injury sustained. I agree thoroughly with the principles here stated; but that leaves only *Stefanelli* v. *Minard*, 342 U. S. 117, and the question of the niceties of the exercise of federal equity jurisdiction left to give us pause. For *Stefanelli* recognizes the jurisdiction of equity and emphasizes only the restraint which the federal court should show against interfering with state criminal processes. I agree wholeheartedly, but ask (as was asked with respect to Little Rock schools, martial law in the Texas oil fields, and other historic federal-state clashes). When does enough of federal law violation become too much? The facts rehearsed above demonstrate in my opinion that only by the course of federal injunction will the present impasse be resolved. *Schwartz* v. *Texas*, 344 U. S. 199, shows that the way is not by appeal from a conviction already had; indeed it confirms the view that this is the one healthy and direct and complete solution. A clean excision is better than continuous mangling. Involved in *Stefanelli* was an *isolated* case of federal law violation, not a consistent pattern as here. Also to be noted is the less direct compulsion of the federal law there, since the Fourth Amendment does not touch

the problem of communication and evidence directly no federal crime was there involved; and the dam age had already been done. Carefully considered I regard *Stefanelli* as authority showing the need and the utility of the action I urge, rather than to the contrary.

Consequently I am persuaded by and would follow the good opinion of Judge Medina upon the grant of a stay in this case. *Pugach* v. *Dollinger*, 2 Cir. Feb. 11, 1960. I also note that two state justices have reached a like conclusion and decline to proceed further in wire tapping. *Matter of Interception of Telephone Communications*, 9 Misc. 2d 121, 170 N. Y. S. 2d 84, Hofstadter, J.; *Application for an Order Permitting the Interception of Telephone Communications of Anonymous*, 207 Misc. 69, 136 N. Y. S. 2d 612, Hofstadter, J.; *Application for Order Permitting Interception of Telephone Communications*, 28 U. S. L. Week 2446 (N. Y. Ct. Gen Sess. N. Y. C., March 7, 1960), Davidson, J. These cases not only illustrate the uncertain and anomalous position into which state judges are now thrust, but also are good examples to United States judges. In the first case cited here, Mr. Justice Hofstadter makes a very pointed allusion to the mandate of the United States Constitution that laws made pursuant to it are 'the Supreme Law of the Land,' binding upon us all, 'any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.' U. S. Const. Art. VI, cl 2. This reminder from a distinguished state brother of the necessity for obedience to the 'Supreme Law' ought to go far to allay the fear expressed that the state officials will defy this law, even after it has been authoritatively defined in the course of this litigation, and that the federal courts will be flooded with actions to curb this defiance. For my part I entertain no such fear

> of either the defiance or the flood-of cases; and hence I forego comment on the implication that mere number of applications may bar the right to equity relief. On the contrary I venture to believe that our state brothers and colleagues in law enforcement, both on the bench and in the prosecuting offices, will welcome definitive resolution of the present hopeless stalemate and will hasten to comply with the requirements of law as soon as they are made clear."

The uncertainty and confusion that exists in the New York State Judiciary on this question, is manifested when an eminent Jurist of the Court of General Sessions, New York County, Davidson, *J.*, despite the ruling of the New York Court of Appeals, in the case of *People* v. *Variano*, 1959, 5 N. Y. 2d 391, and *People* v. *Broady*, 1959, 5 N. Y. 2d 500, on March 7th, 1960, refused to sign an order to permit a wiretap, in the matter of the "*Application for Order Permitting Interception of Telephone Communications*," 28 U. S. L. Week 2446.

Judge Davidson, in his opinion, stated:

> "Lawlessness by the police and the district attorney, who are sworn to uphold and enforce the law will not aid in the enforcement of the criminal law, nor will it heighten the respect of our citizens for our law."

In *Nardone* v. *U. S.*, 302, U. S. 379, at page 383, the Court stated as follows:

> "The answer to the question is one of *policy*. Congress may have though it less important that some offenders should go unwhipped of justice than that the officers should resort to methods *inconsistent with ethical standards and destructive of personal liberty.*" (Italics ours)

From the above it is apparent that Congress set fo
ethical standards for the *whole* people of the United Sta
including the people of the State of New York. There
no exceptions.

In the second *Nardone* case, *Nardone* v. *U. S.*, 308, U
338, at page 341, the Supreme Court stated as follows

> "The essence of a provision forbidding the acqu
> tion of evidence in a certain way is that merely
> evidence shall not be used before the Court, but
> it shall *not be used at all.* (Italics ours)
>
> A decent respect for the policy of Congress n
> save us from imputing to it a *self defeating, if*
> *disingenuous purpose.*" (Italics ours)

This language cannot be misinterpreted. Congress
passing Sec. 605 of the Federal Communications Act did
intend to pass a law that was *self defeating.* To permit
State of New York, or any other state, under the *guis*
evidentiary rules to violate this law with impunity wo
amount to nullification or destruction of the "ethical sta
ards" established by Congress, as representatives of
Federal Government and all of its people.

The issue presented by this case is thus one of first
pression and great importance. Concededly the use of w
tapping by state law enforcement officers is widespre
There is no way to determine the extent to which fed
officers are making use of state wiretaps, but there is ev
reason to believe that such use is also widespread.

It is thus apparent that the issue here presents an
portant and far reaching question in the field of fed
and state powers. The conflict must be resolved lest an

of Congress, such as Sec. 605 of the Federal Communications Act, be nullified and invalidated by the non-enforcement by the executive branch of the Federal Government, and the continuous and willful violation by the states.

B. Sec. 605 independently of Sec. 501 is a civil rights Statute protecting the right of privacy in telephonic communications of every person.

Sec. 605 was drawn with meticulous care whose language is crystal clear. The use of the words

> "*No person not being authorized by the sender* shall intercept any communications and divulge or publish the existence, contents, substance, purport, effect or meaning of such intercepted communication to any person".

"No person" means exactly what it says, that includes criminals, members of the police department of the State of New York or anyone else. It is a right that the citizens of the U. S. enjoy and it can be enforced by civil action and in a proper case, where there is no adequate remedy at law by injunction. See: *Rea* v. *U. S.*, 350 U. S. 214; 28 U. S. C. 1337, 1343.

It is interesting to note that the language of the Statute did not employ the term "It shall be illegal". The language of the statute clearly provides all the people of the U. S. with the right to injunctive relief in a proper case.

It is of interest to note the care used in drafting this statute by the exception provided at the end.

C. The doctrine in *Schwartz* v. *Texas*, 344 U. S. 199 should be re-examined in the light of present conditions.

Judge Minton when he wrote the opinion of the C in *Schwartz* v. *Texas*, 344 U. S. 199 was dealing with isolated interception of a telephone communication. To the widespread violation of Sec. 605 by state officials the use in state courts have for all purposes destroyed nullified that statute by wilfull disobedience of state offici *Schwartz* has encouraged state officials, district attorn and judges to become parties to a criminal act in the v Court room that is supposed to represent law and ord Under the guise of a rule of evidence and with the back of *Schwartz*, violation of this statute becomes a daily occ rence and disrespect for the law mounts.

In *Elkin* v. *U. S.*, 264 U. S. 206, the Court stated as follo at page 217:

> "The rule is calculated to prevent, not to repair. purpose is to deter, to compel respect for the c stitutional guaranty in the only effectively availa way, by removing the incentive to disregard it."

It is obvious that if this incentive is removed the dign of Congress of the United States, of our Courts and Courts of our states would be upheld and vindicated. do otherwise would lead to what Justice Brandeis sta and foresaw in *Olmstead* v. *U. S.*:

> "In a government of laws, existence of the gove ment will be imperilled if it fails to observe the l scrupulously * * *

If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it breeds anarchy."

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the United States District Court and the judgment of the United States Court of Appeals should be reversed.

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